

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FRANCIS WOUKOP YOMI,

Plaintiff(s),

v.

CARLOS DEL TORO, et al.,

Defendant(s).

CASE NO. C23-5199-KKE

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR LEAVE TO AMEND THE
COMPLAINT

Plaintiff Francis Woukop Yomi filed this action in April 2023, asserting claims that he had exhausted before the Equal Employment Opportunity Commission ("EEOC") related to his employment with the United States Navy in July and August 2014. Dkt. No. 6. In April 2016, Yomi voluntarily withdrew a retaliation/discrimination claim listed in his complaint ("Claim 7") while his complaint was pending before the EEOC. *See* Dkt. No. 46-3. Between the time of the 2016 withdrawal and May 2024, Yomi did not reference Claim 7 in the EEOC proceedings or in this case. But on May 28, 2024, Yomi filed a motion for leave to amend his complaint to add Claim 7 and to edit the wording of the claims listed in the initial complaint. Dkt. No. 46. Defendant Carlos Del Toro, secretary of the Navy, does not oppose Yomi's motion insofar as it seeks to edit the wording of claims, but does oppose his request for leave to add Claim 7. Dkt. No. 47. For the following reasons, the Court agrees that Claim 7 is time-barred and thus will allow

1 Yomi to amend his complaint to edit the wording of his claims, but will not grant leave to add
2 Claim 7.

3 After the passage of 21 days since the service of a responsive pleading to a complaint, a
4 plaintiff may thereafter amend the complaint “only with the opposing party’s written consent or
5 the court’s leave.” Fed. R. Civ. P. 15(a)(1)–(2). “The court should freely give leave when justice
6 so requires.” *Id.* A court “considers the following five factors to assess whether to grant leave to
7 amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of
8 amendment; and (5) whether plaintiff has previously amended his complaint.” *In re W. States*
9 *Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 738 (9th Cir. 2013) (cleaned up), *aff’d sub nom.*
10 *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015). An amendment is futile if it would be subject to
11 dismissal. *See Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

12 Here, allowing Yomi to add Claim 7 to this action would be futile because that claim is
13 time-barred, for the reasons outlined in Defendant’s partial opposition. Dkt. No. 47. Under Title
14 VII, which governs Yomi’s claims here (Dkt. No. 6 at 3), claimants have 90 days to file an action
15 in federal court after receiving notice from the EEOC that it will not act on their claim. *See* 42
16 U.S.C. §§ 2000e-5(f)(1), 2000e-16(c)–(d); 29 C.F.R. § 1614.407. Although Yomi withdrew Claim
17 7 while it was pending before the EEOC (Dkt. No. 46-3), and therefore did not receive a right-to-
18 sue letter or other order that explicitly referenced the 90-day deadline to file a federal lawsuit, he
19 did receive notice that his withdrawal was effective and that Claim 7 was no longer remaining in
20 his EEOC case. *See* Dkt. No. 48-3. Yomi did not take any subsequent action to exhaust Claim 7
21 for approximately eight years while litigating his complaint before the EEOC or when filing his
22 complaint in this federal action. The statute of limitations on Claim 7 therefore either expired 90
23 days after he received notice that his withdrawal of Claim 7 was effective (Dkt. No. 48-3 at 3
24 (dated June 10, 2016)), or 90 days after the issuance of his right-to-sue letter (Dkt. 48-5 (dated

1 December 6, 2020)). Under either scenario, Claim 7 is now time-barred and would be subject to
2 dismissal if Yomi added it to his amended complaint.

3 Yomi raises several arguments in his reply. Dkt. No. 40. First, Yomi contends that
4 Defendant's opposition is untimely, but he is mistaken. Yomi's motion was filed on May 28,
5 2024, and was therefore ripe on June 18, 2024, under the Local Rules of this district. *See* Local
6 Rules W.D. Wash. LCR 7(d)(2). Defendant's response was due on June 12, 2024, and it was in
7 fact filed on that day. *See* Dkt. No. 47. And as to Defendant's argument regarding the statute of
8 limitations, Yomi asserts that any actions taken while his complaint was pending with the EEOC
9 are irrelevant to his federal lawsuit. Dkt. No. 49 at 4. But, as discussed earlier, the statute of
10 limitations on claims presented to the EEOC starts running when the EEOC takes certain actions,
11 and Yomi cites no authority indicating that the clock restarts in federal court. Yomi is mistaken
12 that either Federal Rule of Civil Procedure 15 or 41 can revive a time-barred claim. *Id.*

13 Defendant has met his burden to show that allowing Yomi to add Claim 7 to this lawsuit
14 would be futile, and the Court thus will not grant leave for that purpose. But to the extent that
15 Yomi wishes to edit the wording of the claims listed in his original complaint, he has leave to do
16 so. The Court therefore GRANTS IN PART and DENIES IN PART Yomi's motion for leave to
17 amend his complaint. Dkt. No. 46. Yomi may file an amended complaint no later than July 31,
18 2024.

19 Dated this 11th day of July, 2024.

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22 Kimberly K. Evanson
23 United States District Judge
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